

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNIVERSAL CITY STUDIOS, INC.,	:	
Plaintiff,	:	
-against-	:	82 Civil 4259
	:	(RWS)
NINTENDO CO. LTD. and	:	
NINTENDO OF AMERICA, INC.,	:	
Defendants.	:	

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Deposition of Third-Party Witness

WILLIAM M. REGAN, taken by the Defendants,
pursuant to subpoena, at the offices of
Mudge Rose Guthrie Alexander & Ferdon,
Esqs., 20 Broad Street, New York, New York
10005, on Friday, March 11, 1983, at 10:40
o'clock in the forenoon, before Robert E.
Levy, Certified Shorthand Reporter and
Notary Public within and for the State of
New York.



WALTER SHAPIRO, C.S.R.
CHARLES SHAPIRO, C.S.R.

DOYLE REPORTING, INC.
CERTIFIED STENOGRAPHIC REPORTERS
369 LEXINGTON AVENUE
NEW YORK, N.Y. 10017
TELEPHONE 212 - 867-8220

1 brought back to me. I looked at the documents I
2 produced. That is about all.
3

4 Q. Okay.

5 MR. GALLATIN: Off the record.

6 (Discussion off the record.)

7 Q. Mr. Regan, can you describe your
8 employment history to me since leaving law school?

9 A. Yes. I became Assistant United States
10 Attorney in the Southern District of New York in
11 December 1941. Then I went on military leave in May
12 1942.

13 Returned to the U.S. Attorney's office in
14 December of 1945. Resigned in 1948. Joined the legal
15 staff of General Electric Company. Resigned in 1952.
16 Joined the legal staff of Standard Brands,
17 Incorporated about 1953 or so.

18 I opened my own office in ^{1953 or 1954} ~~1958~~ I
19 organized the firm of Regan, Goldfarb, Powell & Quinn,
20 which was dissolved in December 1981. The name then
21 was Regan, Goldfarb, Heller, Wetzler & Quinn.

22 Q. Since 1981?

23 A. I have been an individual practitioner,
24 trying to retire.

25 Q. Do I understand you have a continuing

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1
2 relationship with RKO General?

3 A. I represent them in various matters that
4 I'm trying to wind up, ^{of} which this is one.

5 Q. In your position on the legal staff of
6 General Electric, what generally were your duties and
7 responsibilities?

8 A. For the first year -- about the first two
9 years I was exclusively a labor lawyer, believe it or
10 not. Then in the latter part I was in the Small
11 Appliances Division as -- general commercial law; and
12 then I was made general counsel of the Aircraft and
13 Ordinance Service Division headquartered in
14 Schenectady; and at that point I resigned.

15 Q. You joined Standard Brands?

16 A. I joined Standard Brands.

17 Q. What were your duties and
18 responsibilities at Standard Brands?

19 A. I was back to labor law, wage and price
20 control, you know, it was during the Korean War. By
21 "controls," supplies of steel, and all that business.
22 N.P.A.

23 Q. When did you first become involved with
24 RKO General?

25 A. When I opened my own office in 1952³ or

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2 A. Yes, from time to time.

3 Q. Mr. Regan, do you have a working
4 definition of what merchandising rights are?

5 A. Well, you mean what I call merchandising
6 rights?

7 Q. Yes.

8 A. I think some of the documents, it may be
9 defined to some extent.

10 Q. I would like your definition.

11 A. My impression of it is the exploitation
12 of a motion picture or the characters or any element
13 of it by means other than the exhibition of it in
14 theaters or on television or other exhibition means,
15 means of exhibition, with the possible exception of
16 cassettes, video tapes. I don't know whether they
17 would call those merchandising or not. I don't think
18 so. They would be under exhibition, too. I'm not
19 sure of that.

20 Q. So I understand, then, there is a
21 dichotomy in your mind between exhibition and
22 merchandising?

23 A. Yes.

24 Q. Do I understand that you were involved in
25 the merchandising of "King Kong" for RKO?

Regan

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1 exploitation of the films in the RKO film library, one
2 of which is "King Kong," the original "King Kong."

3 Q. Does Ms. LeVine have a title?

4 A. I don't know it.

5 Q. She is Ms. Zitter's superior?

6 A. Yes.

7 Q. Do you recall the names of any of these
8 other people in the Pictures Division?

9 A. Yes. There is a lady about 80 years old,
10 Helen Schachner. She keeps the books. There is a
11 fourth lady, who is maybe a little over 80. She
12 handles the traffic of the prints of the movies when
13 they are needed for television exhibition or
14 theatrical exhibition or elsewhere.

15 Q. Does RKO have an in-house legal staff?

16 A. Yes.

17 Q. How many people on that legal staff?

18 A. Lawyers?

19 Q. Yes.

20 A. Four.

21 Q. Can you identify them for me?

22 A. Kenneth Frankel, general counsel; Oliver
23 Janney, David Bustard, and Monique Reid.

24 Q. Is the in-house legal staff involved in
25

Regan

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1 the exploitation of "King Kong"?
2

3 A. Ms. Reid could be occasionally.

4 Q. What would she do?

5 A. Sale of the footage or stills.

6 Q. Would she draft up the licensing
7 agreements, for example?

8 A. Yes.

9 Q. She would essentially do the same sorts
10 of things that you continue to do for RKO?

11 A. I hope so. She is brand new. Just
12 arrived in November 1982. She has prepared one deal.
13 It is Universal's. It was in vain.

14 Q. Was this a deal pursuant to the
15 collateral agreement entered into at or about the time
16 of the Universal v. RKO litigation that was settled in
17 the 1970's?

18 A. The deal that Ms. Reid -- it was -- the
19 deal was for making a giant balloon of King Kong to
20 put on the Empire State Building, whatever date the
21 picture opened 50 years ago, and Universal was going
22 to authorize it. They have got those rights from
23 Cooper, I believe, first.

24 Q. Was RKO'S authorization of this project
25 requested?

A. Yes.

Q. Did RKO give its authorization?

A. The authorization was drafted. It was never given because its Universal's right.

MR. GALLATIN: Would you please mark this as Exhibit 61 for identification.

(Document marked Defendants' Exhibit 61 for identification, as of this date.)

Q. I show you Exhibit 61 for identification. There is a cover memorandum which is entitled "Inter-organization correspondence." It is addressed to Ruth Zitter from Monique Reid. And attached to that is a letter addressed to Robert Keith & Company from RKO General Pictures.

Would you review this document.

A. Yes.

(Pause)

Q. Have you finished reviewing the document?

A. Yes.

Q. Is the project referred to in this document the project which you have just described?

A. Yes.

Q. Is the attached letter agreement the agreement which you said was drafted but not executed?

Regan

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2 A. That's right, yes.

3 Q. To your knowledge, Mr. Regan, has
4 Universal authorized this project or entered into a
5 licensing agreement with respect to this project?

6 A. I mentioned to Joe DiMuro the other day,
7 I don't know if they have done it or not, but they
8 plan to or maybe they have, I don't know.

9 Q. Did RKO refer Robert Keith & Company to
10 Universal with respect to this project?

11 A. I believe so, but I'm not sure.

12 Q. Now, Mr. Regan, you have identified a Ms.
13 LeVine, Ms. Zitter, several people who you believe to
14 be over the age of 80 years old, and Ms. Reid as
15 being involved with the exploitation of the "King
16 Kong" property at RKO.

17 Are there any other individuals that you
18 know of who were involved with the exploitation of
19 "King Kong" at RKO?

20 A. Well, to the extent that "King Kong"
21 might or might not come up, there is C. Robert Manby,
22 executive vice president of the company, and he is the
23 head of the RKO Pictures Division. So he is Ms.
24 LeVine's superior. If there is any major matter on
25 "King Kong," he might be involved.

1
2 think -- the conversation, the nature of the case,
3 copyright, trademark and passing off~~er~~.

4 Q. You are describing the discussion you had
5 with Mr. DiMuro?

6 A. Yes.

7 Q. For the record, tell us who Mr. DiMuro
8 is.

9 A. He is on the legal staff of Universal
10 Studios, Inc. I believe that is his technical
11 position. I don't know if he is called counsel or
12 what.

13 Q. Was this a discussion over the telephone?

14 A. Yes.

15 Q. Did he call you or did you call him?

16 A. Could have been either way.

17 Q. Do you recall what the purpose of the
18 phone conversation was?

19 A. Yes. I wanted to get his opinion on a
20 confession of judgment on a promissory note, I sent
21 him a draft to get his comments.

22 Q. I take it this has nothing to do with
23 this litigation?

24 A. Has nothing to do with this. I also
25 wanted his viewpoint on who owns the stills, which is

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2 still an open issue. I said I was going to be deposed
3 or probably would be. I don't know when I talked to
4 him; last week it must have been.

5 Q. I'm sorry. Did you say you didn't know
6 when this discussion occurred?

7 A. It would have to be last -- earlier this
8 week.

9 Q. Earlier this week?

10 A. Or last week, because I can time it with
11 the preparation of that note.

12 Q. When you --

13 A. It was last week.

14 Q. Last week?

15 A. Last week.

16 Q. When you referred to stills a moment ago
17 were you referring to stills in the "King Kong" movie?

18 A. Yes.

19 Q. Which "King Kong" movie?

20 A. The original.

21 Q. The 1933 RKO "King Kong" movie?

22 A. Yes.

23 Q. Do you recall what you said to him on
24 that subject?

25 A. On stills?

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1 Q. Yes.

2 A. Yes, it is my personal opinion and
3 this -- that RKO has the exclusive right to license
4 the stills as such, but it can't use a still on a game
5 and sell the game with it on it, so it is sort of a
6 mixed bag. And I don't, in my opinion, I don't think
7 Universal can take one of our stills and use it on a
8 game.
9

10 Q. Do you recall what Mr. DiMuro said to
11 you?

12 A. Yes, he disagrees.

13 Q. Did he tell you why he disagreed?

14 A. Yes, he believes that when you have
15 merchandising rights, if a company has
16 merchandising rights in a character or a fixture,
17 they are frustrated to some extent by not being able
18 to use stills, still shots from the picture.

19 Q. I take it that the matter is unresolved
20 between RKO and Universal?

21 A. It is at the moment.

22 Q. Has litigation between threatened over
23 this issue?

24 A. Oh, no.

25 MR. GALLATIN: Off the record.

1
2 involved in this assignment?

3 A. I don't think I did. I just went along
4 with it because Universal has the merchandising rights
5 in general.

6 Q. Who drafted this document, Exhibit 2,
7 Mr. Regan?

8 A. I presume someone at Universal. We
9 didn't, to my knowledge.

10 Q. Mr. Regan, did RKO consider suing
11 Nintendo itself?

12 A. Not that I know of.

13 Q. Would you have known if RKO was
14 considering that or had considered that?

15 A. I think I would have.

16 Q. Did you discuss suing Nintendo with
17 anybody at RKO?

18 A. No.

19 Q. Did you discuss whether RKO should sue
20 Nintendo with anybody at Universal?

21 A. No.

22 Q. Did Universal ask you to join in this
23 lawsuit as a plaintiff?

24 A. No. Well, this is to my knowledge. All
25 of those, no, sir.

Q. Did you have any claim by Mr. Richard Cooper in mind when you drafted that subparagraph?

A. Only to the extent that -- I guess I didn't know at the time the arrangement between Universal and Cooper. I didn't want Cooper looking to us for anything that Universal got out of the use -- out of the suit on account of exploitation of the character King Kong, or any of the merchandising elements.

Q. When you say the arrangement between Universal and Cooper, which arrangement are you speaking of?

A. After Cooper won a judgment against RKO, which established -- oversimplified -- which established that he owned the character, name, et cetera of "King Kong," he assigned it to Universal. I didn't have the full details of what the assignment covered.

Q. So the arrangement you are referring to is the assignment?

A. Yes, precautionary paragraph.

Q. Mr. Regan are you familiar with the litigation commenced by Universal against RKO in the

would just refer to the pleadings, unless you want me to sum them up.

Q. I think just if you would sum them up, I'm only looking for a frame of reference as to your understanding.

A. That his father gave RKO a license to make one picture only. That he retained ownership of the character, the story, I guess, merchandising rights, publishing rights, all the rights in the picture.

Q. Can you state what was RKO's position in the lawsuit, your understanding of it?

A. In the principal lawsuit, as distinguished from the cross-claim by Cooper, RKO's position was that the picture was properly copyrighted, and they owned the copyright, and it was in the public domain.

In the case of Cooper, the work was for hire. In the case of Cooper, he assigned all rights in the story to RKO, and it was also, I think, a work for hire. In other words, he did it while employed by RKO. They were entitled to the fruits of his work.

Q. Isn't it correct, Mr. Regan, that RKO today owns a copyright in the 1933 "King Kong"

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photoplay?

A. Yes.

Q. And the final judgment in the Universal
v. RKO litigation did not abrogate that copyright, did
it?

A. No. It confirmed it.

Q. Now, did anybody else have a copyright
interest in the 1933 photoplay after the final
judgment in that litigation?

MS. FAUCHER: Could you repeat that
question?

(Record read.)

MR. GALLATIN: I'll rephrase.

Q. Was the effect of the final judgment in
that litigation to create a copyright interest in the
1933 photoplay in anybody other than RKO?

MS. FAUCHER: Object to the form of
the question; and ask that you rephrase the
question to make it clear that you are asking
for Mr. Regan's opinion of what the effect of
the judgment was.

I don't think he is competent to testify
as to what the effect of the judgment is.

MR. GALLATIN: I'm asking for his

Regan

understanding of what the effect of the judgment was as a spokesman and the person who has been produced here as spokesman for RKO General.

Q. Do you understand that, Mr. Regan?

A. Yes.

Q. Can you answer the question?

A. I'll make a statement that answers it, maybe: RKO is the sole owner of the copyright.

Q. Today?

A. Today.

Q. And at all times previous to today?

A. Yes. Ever since it was copyrighted in 1933.

Q. Do you know what rights Cooper obtained as a result of the final judgments in the Universal v. RKO litigation?

A. In the --

MS. FAUCHER: Objection to the form of the question.

A. I'll just state that the judgment in the counterclaim sets forth the rights that the Court found that he had. I would refer you to the judgment.

Q. Could you tell me what your understanding

1 is?

2 A. Cooper had all merchandising rights,
3 remake rights, sequel rights, ownership of the
4 character name, "King Kong."
5

6 MR. GALLATIN: I would like the reporter
7 to please mark this as Exhibit 63 for
8 identification.

9 (Document marked Defendants' Exhibit 63
10 for identification, as of this date.)

11 Q. Would you please review Exhibit 63, Mr.
12 Regan. It is a letter on the letterhead of the firm,
13 Regan, Goldfarb, Heller, Wetzler & Quinn. And it is a
14 letter addressed to Mr. Anthony Liebig. The "Re" on
15 the letter is Cooper Accounting (Universal v. RKO),
16 and it is signed, or it is -- the author of the letter
17 appears to be William M. Regan.

18 Do you recognize this document?

19 A. I do.

20 Q. Can you tell me what it is?

21 A. Because I'm my own lawyer today, because
22 I haven't looked at the contents, this is the type of
23 document I would not have submitted to you, on the
24 basis of privilege. I don't know where it came from.
25 It may be harmless, but I just want to make the record

1 whether it was included finally, I don't recall.

2
3 Q. Does RKO now take the position that any
4 such revenues from the licensing of stills are not
5 properly payable to Cooper under the Cooper judgment?

6 A. Yes. I was going to explain that the
7 licensing -- depends what the still is licensed
8 for. If it is licensed for publication -- the answer
9 is yes.

10 Q. Now --

11 A. Let me add to that. I think it will be
12 helpful. That doesn't mean we can license stills for
13 any purpose. We can't invade the merchandising areas
14 that Cooper and I presume now Universal has without
15 their consent.

16 Q. Can Universal use your stills without
17 your consent?

18 A. That is what the dispute is.

19 Q. Does RKO --

20 A. At the moment we maintain they cannot.
21 We are waiting to hear further from Mr. DiMuro on that
22 point.

23 Q. Why, Mr. Regan, are revenues derived from
24 the theatrical exhibition of the 1933 photoplay not
25 properly payable to Cooper under the Cooper judgment?

1 agreement?

2 A. I again refer you to the agreement.

3 Q. But do you have any understanding of
4 that?
5

6 A. My broad understanding prior to reading
7 this is that everything that Cooper was awarded in the
8 cross-claim was assigned to Universal, with the
9 exception of some payments, which I found a little
10 confusing to me in here.

11 Q. Would you please turn to paragraph 3-A of
12 the agreement on page 3 of --

13 A. Exhibit D-4?

14 Q. Yes, sir.

15 A. Yes.

16 Q. That paragraph provides, "Notwithstanding
17 the generality of paragraph 12 hereinabove, the
18 following rights are hereby reserved by you: A.
19 Worldwide publishing rights, as such rights are
20 commonly understood in the book publishing and
21 periodical industries, except to the extent that such
22 rights may be in the public domain." Do you see that?

23 A. I do.

24 Q. The "you" in that paragraph I understand
25 is Mr. Cooper; is that your understanding?

1
2 A. Yes.

3 Q. What rights do you understand Cooper to
4 have reserved pursuant to this paragraph?

5 A. Well, in reading it, not knowing any
6 facts, just reading it, one example would be comic
7 books.

8 Q. Is that an example of publishing rights?

9 A. I would think so.

10 Q. Can you give me have a broader definition
11 of what is meant by publishing rights?

12 A. I can't, because the way they define it
13 is that it is understood in the trade. I'm not an
14 expert here, in the first place.

15 Q. Do you have an understanding of what
16 rights Mr. Cooper has pursuant to this paragraph with
17 respect to "King Kong"?

18 A. According to paragraph 3-A?

19 Q. Yes, sir.

20 A. He would have the right to use in printed
21 media, if you call that publishing rights, the name,
22 character, likeness. I suppose part of the story that
23 is allegedly in the public domain or is found to be in
24 the public domain.

25 Q. You have identified comic books as one

Regan

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possible area where Cooper may have rights here. Are there any other areas you can identify other than comic books?

A. Novel.

Q. A novel?

A. Feature magazine article. Almost anything you can think of that is in print is a publication.

Q. I see.

A. I assume -- I don't know what they meant by their parenthetical phrase in 3-A; but that is just Webster talk, not lawyer talk.

Q. Are you familiar with any instances where Cooper has exercised such publishing rights?

A. Since this --

Q. Since this agreement?

A. No, I'm not.

Q. Have there been any instances where RKO has attempted to grant a license of the "King Kong" property, and there is a possibility that a license might also be required for Mr. Cooper?

MS. FAUCHER: What time period?

MR. GALLATIN: Anytime after this agreement was entered into.

1
2 A. I don't know. Can you tell me what you
3 are thinking of, because I'll tell you --

4 Q. I'm trying to find out what you are
5 thinking of.

6 A. I just remember now in that bunch of
7 papers there is a new issue of the "King Kong" novel
8 in 1976.

9 Q. And --

10 A. I don't know who arranged that. Cooper
11 may have.

12 Q. Have you ever --

13 MS. FAUCHER: Can I have that question
14 that he asked?

15 (Record read.)

16 Q. Is it your understanding, Mr. Regan, that
17 Universal has no rights -- has no publishing rights
18 with respect to "King Kong"?

19 A. If this is the only document that exists
20 between Cooper and Universal, it would look like that,
21 yes, because it doesn't say exclusive reservation.

22 Q. Okay. Have you had discussions with
23 anyone at RKO concerning what rights Mr. Cooper may
24 have in the property of "King Kong"?

25 MS. FAUCHER: At what time?

Regan

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6 of this agreement, and specifically to that part of the agreement, paragraph 6, that reads, "Nothing herein contained shall be construed as permitting Universal to duplicate or distribute in any medium verbatim copy or excerpts from the 1933 motion picture." Do you see that?

A. Yes. Wait a minute. In 6, is this?

Q. Yes.

A. All right. I do, yes.

Q. Must Universal obtain a license from RKO to duplicate or distribute verbatim copies or excerpts from the 1933 movie?

A. Yes.

MS. FAUCHER: Objection to the form of the question.

A. Clips.

MS. FAUCHER: I would like to hear what was said after I made that objection or simultaneously therewith.

MR. GALLATIN: Or before.

MS. FAUCHER: I don't want to hear Mr. Gallatin's question.

(Record read.)

Q. Would Universal have to obtain a license

1
2 from RKO to distribute a verbatim copy of the scene
3 from the 1933 movie of King Kong atop the Empire State
4 Building?

5 MS. FAUCHER: Objection to the form of
6 the question.

7 A. To use a clip they would, but I don't
8 know what a verbatim copy is, frankly.

9 Q. A still.

10 MS. FAUCHER: Are you representing that
11 is what a verbatim copy is or --

12 MR. GALLATIN: My question could be
13 phrased in terms of a still.

14 MS. FAUCHER: Again, I object to the form
15 of the question.

16 A. I don't think it means a still. I think
17 it means a clip. A clip.

18 Q. All right. Apart from this agreement --

19 A. I'm not sure what they mean by that word.

20 Q. Apart from this agreement, would RKO
21 require Universal to obtain a license from it to use a
22 scene from the 1933 movie of "King Kong" atop the
23 Empire State Building?

24 A. In what form, in another movie? Or on a
25 product?

Regan

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Q. In any use.

A. Yes. I think they would. Yes.

Q. Do I understand from paragraph 7 of Exhibit D-3 that Universal must pay RKO to use the name, character or story of "King Kong" in a future motion picture?

MS. FAUCHER: Objection to the form of the question. I don't know how the witness is competent to testify as to your understanding of anything. Moreover, I don't believe that the witness drafted this.

Q. Can you answer the question?

A. Would you read the question to me, please, because I was writing a note.

(Record read.)

MS. FAUCHER: I object to the form of that.

A. I would rather refer you again to the document. There are other clauses in here that affect it.

Q. All right.

MR. GALLATIN: Let's take a break.

(Recess taken.)

Q. Mr. Regan, what types of licenses has RKO

1 granted with respect to "King Kong" in the past?

2
3 A. It has granted the following types of
4 licenses, which are also customary in the motion
5 picture industry: It licenses theaters to exhibit the
6 picture theatrically to paying audiences. It licenses
7 distributors to distribute the picture, usually in
8 16-millimeter size film, for exhibition in the home,
9 hospitals, places where no admission is charged, and
10 sometimes where admission is charged, like at
11 colleges.

12 It also has licensed the reproduction of
13 the picture in 8-millimeter size for sale for home
14 use, or at least rental for home use; I'm not sure
15 about sale, probably same.

16 It has licensed the reproduction of it on
17 video cassettes. I don't know if they are all -- I
18 think there are probably different sizes of tape in
19 the cassettes. Reproduction on disks for an operation
20 in like RCA Select-A-Vision for home use only. They
21 are licensed or sold to the consumer.

22 It has licensed various forms of
23 merchandising: dolls, toys, games, comic books and
24 other types, that you will see in the evidence that
25 has been submitted to you. It has licensed the remake

Regan

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1 of the picture which was the subject of the two
2 Universal cases, remake entitled "King Kong." I think
3 I have covered everything. If I --

4
5 Q. Does it also license stills from the 1933
6 movie?

7 A. Yes. I'm sorry. It licenses the use of
8 stills from the 1933 movie for certain purposes.

9 Q. Does it also license footage from the
10 1933 movie?

11 MS. FAUCHER: I would like a
12 clarification, because I believe your initial
13 question was what types of licenses with
14 respect to "King Kong" has RKO --

15 Q. You understand these are questions to
16 licenses that you have ever issued with respect to
17 "King Kong"?

18 A. Yes, right.

19 Q. You have issued licenses with respect to
20 stills and with respect to footage; is that correct?

21 A. That's correct.

22 Q. In addition to the other types of
23 licenses you have described?

24 A. Yes.

25 Q. Of all these types of licenses that you

Regan

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2 have described, are there any which RKO no longer
3 issues?

4 A. Yes. But can I complete the last one?

5 Q. I'm sorry.

6 A. It licenses the picture also for
7 exhibition on television, on cable television and on
8 subscription television, which is a different form of
9 pay television.

10 Q. I'll repeat my question. Have all these
11 licensing activities that you have described, of all
12 of them, are there any of those activities that RKO
13 no longer engage in today with respect to "King Kong"?

14 A. Yes; broadly defined, they no longer
15 engage in the merchandising licensing which the court
16 held belonged to Major Cooper, now Colonel Cooper.

17 Q. With respect to all of the other
18 licensing activities, RKO does still hold itself out
19 as an -- and in fact does engage in such activities?

20 A. No, I should add also, in addition to
21 merchandising, we can't license or remake or sequel
22 the picture.

23 Q. But all other licensing activities RKO
24 still does engage in?

25 A. That it did before?

Regan

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Q. Yes.

A. That's correct. I think that is correct.

Q. Mr. Regan what is a promotional tie-in, if you know?

A. In connection with merchandising, it is a sale, I think, of two items, or the sale of one item and the giving away of another item with each item sold. Did we have a promotional tie-in deal for "King Kong"? I'm trying to remember one. I could then define it by example.

Q. That was going to be my next question. So see if can you answer that.

A. If I could look at all those exhibits you fellows have, I would. Was it Jim Beam?

Q. How about with GAF Corporation?

A. That is the one I was thinking of. That was with Paramount Pictures. We just have copies.

Q. Can you describe what those promotional tie-ins involved, first the GAF promotional tie-in?

A. I refer you to the documents, because my memory is not that good. I glanced through some of these yesterday, but I can't --

MR. GALLATIN: I would like to reporter to mark this, please, as Exhibit 66.

Regan

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(Document marked Defendants' Exhibit 66 for identification, as of this date.)

Q. Mr. Regan, you have been handed Exhibit 66. Do you recognize this document?

A. Yes.

Q. Would you describe it?

A. I'll have to read it again.

Q. Please feel free to do that.

A. All right.

(Pause)

A. I have read it.

Q. Can you describe the document for me?

A. It is a letter from Howard Levine, a lawyer at Paramount Pictures Corporation. One of his functions was the administration from a legal viewpoint of the merchandising deals made by Paramount with respect to the "King Kong" remake.

The letter in effect says that Vue-Master wanted to make a slide presentation of a Walt Disney picture accompanied by a 16-page booklet. And we advised them that we couldn't do the booklet, because it was publishing right which we didn't have.

Q. Who did have that right?

MS. FAUCHER: Objection to the form of

Regan

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the question.

A. We presume Major Cooper had it.

Q. Is it RKO's belief today that to enter into such agreement you would have to get the permission of Mr. Cooper?

A. RKO couldn't do that -- excuse me. RKO couldn't do this.

Q. Is it your belief that for anybody to enter into such an agreement at this point they would have to get the permission of Mr. Cooper?

A. I can't answer that, because I really don't know the facts. Cooper reserved those rights in his deal with Universal. Whether he previously sold them to somebody else, I don't know.

Q. But if Mr. Cooper had not sold those rights to anybody and in fact still held them, would his consent be required to enter into any such deal?

MS. FAUCHER: Objection to the form of that question. You are asking a lot of hypotheticals and --

A. I don't think RKO, and I'm their witness today, has any position on that point, because we couldn't grant it. It may be Universal's problem.

Q. Did you receive this letter in due course

1 from Mr. Levine?

2 A. Apparently I did.

3 Q. At the bottom of the first page, there is
4 mention there to the effect that it might now be
5 timely to approach Mr. Cooper for the purpose of
6 renewing settlement negotiations with him. Are you
7 aware of any such settlement negotiations with Mr.
8 Cooper?
9

10 A. Yes.

11 Q. Were there such negotiations?

12 A. Yes.

13 Q. Where did those negotiations take place?

14 A. I can't give you the date, but it must
15 have been prior to this and it was sometime
16 after the commencement of the Universal Federal Court
17 suit, and we decided to try to buy out Cooper's
18 interest as alleged in his cross-claim
19 and we didn't succeed.

20 Q. Did RKO ever try to buy out any other
21 rights other than those that were alleged in the
22 cross-claim that Mr. Cooper claimed to have in "King
23 Kong"?

24 MS. FAUCHER: From Mr. Cooper?

25 MR. GALLATIN: Yes.

Regan

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1 A. I don't think so. I really don't
2 understand what you mean, either.
3

4 Q. Did RKO ever attempt to secure the
5 publishing rights in "King Kong"?
6

7 A. On a permanent basis from Cooper?
8

9 Q. Yes
10

11 A. I don't know. I don't know whether
12 publishing was included or not.
13

14 Q. Are you aware of any discussions as to
15 whether RKO should attempt to secure these publishing
16 rights from Mr. Cooper?
17

18 A. No. I can't recall, but I don't know.
19

20 Q. Can you describe, Mr. Regan, what the
21 commercial tie-in deal was with respect -- that was
22 proposed with respect to the GAF transaction?
23

24 MS. FAUCHER: Referred to in Exhibit 66?
25

MR. GALLATIN: Yes.

A. No, I don't recollect. Was General
Electric in this, too?

Q. I don't know.

A. No, I don't recollect what the exact
tie-in was. They call it a tie-up deal, by the way.
In the third paragraph.

Q. Okay.

1
2 MR. GALLATIN: Would you mark this as
3 Exhibit 67.

4 (Document marked Defendants' Exhibit 67
5 for identification, as of this date.)

6 A. The last point is, it looks like GAF is
7 going to accept the product and throw in a Disney
8 picture of some sort, Vue-Master.

9 Q. A picture of "King Kong"?

10 A. I don't know. It says "The island at the
11 top of the world." I don't know whether "King Kong"
12 comes in on this one or not. It puzzles me. After I
13 retire, I'll look this one up.

14 MR. GALLATIN: Would you also mark this
15 document as the next exhibit in sequence.

16 (Document marked Defendants' Exhibit 68
17 for identification, as of this date.)

18 Q. You have been handed what has been marked
19 as Exhibit 67 and Exhibit 68. Would you take your
20 time and review them.

21 (Pause)

22 Q. First with respect to Exhibit 67, have
23 you had a chance to review Exhibit 67?

24 A. Yes.

25 MR. GALLATIN: Off the record.

(Discussion off the record.)

Q. You have had a chance to review Exhibit 67?

A. Yes.

Q. Do you recognize this document?

A. Before I say anything, 67 and 68, I recognize them both, and consider them privileged.

Q. Okay. Did you receive Exhibit 67 in due course?

A. Yes.

Q. This is a document that came from the legal files of RKO?

A. Yes. I presume so.

Q. Exhibit 67, would you describe that document, please, in general terms?

A. It is a letter from Mr. Youngman, attorney from RKO -- whose firm represented RKO. In his opinion concerning the publishing rights as defined in the Cooper all-rights assignment to RKO.

Q. Okay. Exhibit 67 refers to a memo dated June 23, 1976. Is that the document that has been marked Exhibit 68?

A. Yes.

Q. Did you prepare the document which has

1
2 been marked as Exhibit 68?

3 A. Yes.

4 Q. I just bring to your attention, Mr.
5 Regan, that attached -- that Exhibit 68 consists of
6 two documents, one of which is an attachment to the
7 cover memorandum. And I take it that your last answer
8 was not meant to say that you prepared the attachment,
9 which is a letter written to you by Howard Levine?

10 A. Right.

11 Q. Which I believe already has been
12 previously marked as Exhibit 66?

13 A. Yes.

14 Q. Did you prepare this memorandum, which is
15 Exhibit 68, in the regular course of business?

16 A. Yes.

17 Q. Was it the regular course of your
18 business to prepare such memorandums?

19 A. Yes.

20 Could we go off the record a second?

21 (Discussion off the record.)

22 Q. You have just wished to clarify something
23 while you were reviewing Exhibit 68. Would you just
24 go ahead and clarify that?

25 A. Yes. While reviewing Exhibit 67 --

1 Q. I'm sorry, 67?

2 A. I noticed that Merian Cooper, not Major
3 Cooper, apparently licensed Western Printing to do a
4 comic book.
5

6 In my earlier testimony, I had said that
7 RKO had licensed it and shared the proceeds with
8 Merian Cooper. If Exhibit 67 is discussing the same
9 comic book, I would require a search of our files to
10 clarify the testimony.

11 Q. The comic books referred to in Exhibit 67
12 were apparently licensed by Mr. Cooper, and RKO did
13 nothing about it; is that correct?

14 A. Apparently. The document speaks for
15 itself. I have no direct knowledge.

16 Q. Okay. Other than RKO, Mr. Regan, who has
17 granted licenses of any kind with respect to the "King
18 Kong" property at any time?

19 A. Well, the remake by Dino De Laurentiis
20 Corporation -- I refer to them as DDL from now on --
21 was distributed in the United States and Canada by
22 Paramount pictures, and they were authorized to
23 merchandise the name and character, and so forth; so
24 they granted several licenses under a license from
25 RKO.

Regan

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Q. Could we pause with Dino De Laurentiis for a moment. Dino De Laurentiis granted licenses pursuant to a license from RKO?

A. Yes.

Q. Do you know during what period of time Dino De Laurentiis was authorized to grant licenses with respect to the "King Kong" property?

A. Well, if I could look at the basic agreement between DDL and RKO for the remake, and another document, which is an amendment, I think, to that called tripartite merchandising agreement, I think the answer is in there.

MR. GALLATIN: I would like to have marked as Exhibit 69 a document, the first paragraph of which is entitled "agreement," dated August 29, 1975 between RKO General, Inc., a Delaware corporation, sometimes hereinafter called "the owner," and Dino De Laurentiis Corporation, a Delaware corporation, sometimes hereinafter called "the purchaser."

(Document marked Defendants' Exhibit 69 for identification, as of this date.)

MR. GALLATIN: I would like to mark as Exhibit 70 a document headed "Agreement made as

Regan

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of this 14th day of April 1976 by and between
Dino De Laurentiis Corporation, a Delaware
corporation, "DDL," Paramount Pictures
Corporation, a Delaware corporation, "PPC," and
RKO General, Inc., "RKO," a Delaware
corporation."

(Document marked Defendants' Exhibit 70
for identification, as of this date.)

Q. Would you look at Exhibit 69 and Exhibit
70, Mr. Regan, and tell me if those are the two
agreements to which you just referred?

A. Yes.

Q. Can you tell me by looking at these
agreements for what period Dino De Laurentiis had the
right to license the property "King Kong"?

A. If you give me a minute --

Q. Yes, sir.

(Pause)

A. The simple answer is, read the document.
We may be here forever. This is illegible.

Q. Off the record.

(Discussion off the record.)

Q. Let me amend my question. Can you tell
me for what period Dino De Laurentiis had the right to

Regan

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1 That would have been a settlement of the counterclaim
2 that was referred to two questions back.

3 Q. What are you referring to now?

4 A. Buying him out, we internally decided we
5 would try to buy him out. We would have money
6 reserved for him in our merchandising deal in case we
7 succeed.

8 Q. When you say buy him out, what are you
9 buying out?

10 A. All his rights.

11 Q. What rights?

12 A. That he claimed in the counterclaim.
13 Before he filed the formal counterclaim.

14 Q. You have used the term "counterclaim."
15 You mean cross-claim?

16 A. Cross-claim, I mean, yes.

17 Q. And the cross-claim that was asserted,
18 ultimately asserted in the federal action in
19 California in the 70's?

20 A. Yes.

21 Q. Okay. Other than merchandising rights in
22 "King Kong, " what other rights has Dino De Laurentiis
23 ever had with respect to the "King Kong" property if
24 you know?
25

Regan

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A. Well the right to remake it. That basic right --

Q. The right to remake the original movie, you mean?

A. Yes, and within that right he had the right of merchandising, cassettes, all the merchandising and other subsidiary rights that I described in answer to a prior question with respect to the old picture. He has them in the new picture, the remake.

Q. What rights does Dino De Laurentiis have with respect to "King Kong" today?

A. He owns his remake, but I don't think he has any further merchandising rights. I assume that he can sell the remake just as a copyright only, that is, cassettes and rentals for cable and pay TV.

Q. Does Dino De Laurentiis have all the rights in the 1976 remake of "King Kong" that RKO has with respect to the original 1933 movie "King Kong"?

MS. FAUCHER: Objection to the form of the question.

A. I don't feel prepared to answer it. I have to think what might be different. It would seem that his rights were comparable to RKO's rights.

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2 Q. Does he have the right to license stills
3 from the 1976 movie?

4 MS. FAUCHER: Objection to the form of the
5 question.

6 A. As far as I know, he has.

7 Q. Do you know if in fact he has licensed
8 stills with respect to the 1976 movie?

9 A. No, I don't.

10 Q. Does he have the right to show the 1976
11 movie?

12 MS. FAUCHER: Objection to the form of
13 the question. What do you mean by "show"?

14 MR. GALLATIN: Distribute it for
15 theatrical presentation.

16 MS. FAUCHER: I still object to the form
17 of the question.

18 A. I presume so. I don't know his deal with
19 Paramount and foreign distributors.

20 MR. GALLATIN: Would you mark this,
21 please, as Exhibit 71.

22 (Document marked Defendants' Exhibit 71
23 for identification, as of this date.)

24 (Document handed to the witness.)

25 Q. Mr. Regan you have been handed Exhibit

1

A. Apparently I did, yes.

2

3

4

5

Q. Did Continental require a license from Universal for the use proposed in the October 15, 1981 letter?

6

7

MS. FAUCHER: Objection to the form of the question.

8

Q. Was that your belief?

9

10

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A. No, it was a fuzzy area. My belief is that the poster was going to be in effect part of the copyrighted picture, an exact scene from it, and the posters were a merchandising right that Universal had. So it is almost a typical case of the problem where they use something from the copyrighted picture but in a merchandising thing.

16

17

18

19

Q. When you say it was a fuzzy area, does that mean that it is not clear who, from whom the license has to be sought with respect to this use; is that correct?

20

21

22

23

A. Well it is clear that RKO can't give a poster deal, even though it uses its own stills. It is not clear in Universal's mind that they can't use the stills for the poster.

24

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Q. Is it clear to you --

A. It hasn't been clarified yet.

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Q. It doesn't direct licensees of those
stills to go to Universal to seek a license as well as
from RKO?

A. That's right.

Q. To your knowledge, do any of these
licensees also seek licenses from Universal with
respect to the use of these stills?

A. The Budweiser people -- their agency, I
forget the name, I think did.

Q. Do you know whether they secured a
license from Universal?

A. No they didn't. They came to us.

Q. They secured a license from RKO?

A. No. That is what Joe is trying to
determine, whether they are going to give it to them.

Q. Budweiser is the only one that you can
recall who went to Universal to secure the use of the
stills?

A. The only one I'm aware of, as to who is
going to give it to them.

MR. GALLATIN: Off the record.

(Discussion off the record.)

(Recess taken.)

BY MR. GALLATIN:

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2 Q. Earlier, Mr. Regan, you mentioned that
3 you had a discussion with Mrs. Zitter about RKO's
4 licensing system; do you recall that?

5 A. On stills?

6 Q. Yes, I believe so.

7 A. Yes.

8 Q. Can you tell me what that discussion, the
9 substance of that discussion was?

10 A. Yes, in the subpoena you requested
11 stills.

12 MS. FAUCHER: Off the record.

13 (Discussion off the record.)

14 A. In the subpoena you requested the
15 production of stills from the "King Kong," original
16 "King Kong" picture and the second "King Kong"
17 picture. By happenstance we had some from the second
18 picture, which I produced. The only stills that we
19 had at RKO from the first picture Ms. Zitter provided,
20 and I gave them to you today.

21 Because whenever anyone wants to use a
22 still and they haven't already got it, we send them to
23 a company called Vitaprint Corporation, 370 west 35th
24 Street, New York City, New York 10001. They have only
25 black-and-white negatives of stills. And then the

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1 person who gets the still from them comes to RKO for a
2 license to use it for the intended purpose. Very
3 often, the request for a license for the use of a
4 still, the requester might already have the still. We
5 don't know where he got them. Apparently they are
6 available in stores hither and yon.

7
8 Q. Does that conclude your answer?

9 A. Yes. It does.

10 Q. Are those notes notes with respect to
11 your conversation with Mrs. Zitter?

12 A. Yes.

13 Q. Is there anything in those notes you
14 haven't just told me about?

15 A. Yes. I started to take the list of
16 recent still licenses from her on the phone, and then
17 I said, "Would you please write it up, so a couple of
18 them are here," and then I stopped. You are welcome
19 to look at them and compare them to the list.

20 Q. Please.

21 MS. FAUCHER: Is that list -- it is your
22 belief that that list is reflected on one of
23 the exhibits?

24 THE WITNESS: Yes. It should be right
25 here.

Q. Who handles the request in the first instance at RKO?

A. It could come initially to Ruth Zitter or Betty Levine or Bob Manby. Usually someone else in the company, because people don't know where to start. In fact, I have had calls and I just tell them to call Betty Levine or Ruth Zitter or Bob Manby.

Q. Do people continue to call RKO seeking merchandising licenses with respect to King Kong?

A. They have. It is difficult to determine what merchandising means, but the obvious most recent one has been in the papers, that big inflatable King Kong on the Empire State Building. Universal licensed that.

Q. When that request to license the King Kong property in connection with the balloon on top of the Empire State Building came to RKO, can you describe how that was handled?

A. I think initially it was a request from a company called D. F. Keith. I am not sure whether it initially went to Universal and Universal referred it to RKO and RKO prepared a license to permit the use of the character in the balloon; Universal entered the picture again claiming that it was merchandising, that

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2 it was their license.

3 Q. But you think in the first instance the
4 request may have gone to Universal, and Universal
5 referred it to RKO, is that correct?

6 A. I am not sure but the wrong person
7 obviously, because it was Universal's right, so we had
8 them do it.

9 Q. But RKO prepared a license for this use,
10 is that correct?

11 A. It did.

12 Q. What property interest did that license
13 purport to grant?

14 A. The right to use the character King Kong
15 in the form of an inflated balloon.

16 Q. Are there any standing instructions at
17 RKO with respect to the licensing of any interest RKO
18 may have in the King Kong property?

19 A. I don't think there are any written
20 instructions. I have advised them that they have no
21 right to license, including that balloon of King
22 Kong, the character or name, all in compliance with
23 the court order.

24 I think I testified in the first ^{session of} ~~date of~~
25 ^{this} ~~that~~ deposition we still haven't resolved who has the

A000690

1 right to license the use of stills..
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3 Q. Am I correct that you also haven't
4 resolved the question of who has the right to license
5 clips from the movies?

6 A. No, that has never been an issue. RKO
7 has the right to license clips.

8 Q. Has the exclusive right to license clips?

9 A. Yes. Between Universal and RKO, yes. I
10 don't think Universal disputes that. If they do, I am
11 not aware of it.

12 Q. When a request is made of RKO to license .
13 the King Kong property, are you ever consulted with
14 respect to the question of whether or not RKO has the
15 right to grant a license request?

16 A. Yes. I have just explained that in
17 connection with the big balloon.

18 Q. Can you recall any other instances where
19 you have been consulted?

20 MS. FAUCHER: Forever?

21 MR. GALLATIN: Yes.

22 A. You mean at any time? Not since this
23 Universal case?

24 Q. I am sorry; since the declaratory
25 judgment action was handed down in the California

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1 action in favor of Universal against RKO in 1976.

2 A. I am muttering to myself the balloon. We
3 had a request for cards, but I don't know if it
4 included King Kong, because I said they can't do King
5 Kong on postcards. It seems to me there are a couple
6 of other instances.

7 Q. Perhaps I can help you out.

8 A. If you can, would you? I am not trying
9 to fool you. I can't remember that.

10 Q. You do recall that there have been such
11 instances?

12 A. Yes.

13 Q. A number of such instances?

14 A. That is what I am trying to remember.
15 The most recent was the balloon. The postcards wasn't
16 an issue. I just forestalled that by saying remember,
17 you can't give them King Kong postcards. If you can
18 help me, that would be fine.

19 Fred Astaire.

20 Q. What were you referring to when you
21 mentioned Fred Astaire?

22 A. We licensed Fred Astaire clips, Fred
23 Astaire pictures. We always get permission from Fred
24 Astaire, by the way.
25

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2 Q. Does RKO ever refer potential King Kong
3 licensees to Universal?

4 A. We referred the balloon back to them. If
5 it came from them initially, I am not sure.

6 I know another one. Budweiser Beer wants
7 to do a King Kong series of ads with King Kong in it,
8 and we haven't determined whether they want to use a
9 still of the Empire State scene, which would be one
10 thing, or if they are going to use a drawing of the
11 Empire State scene. That is probably Universal's
12 right to give it to them, but we haven't had a
13 discussion about it really, with Universal.

14 That is a case where the Budweiser ad
15 agency or law firm were referred back to us by
16 Universal. It wasn't the balloon, and Universal
17 claims that referral was by someone who didn't know
18 what he was talking about. I don't know how that has
19 been resolved. I am inclined to think Universal has
20 the right to do it.

21 Q. Do I understand correctly that the
22 Budweiser people first approached Universal on this
23 deal and Universal referred them to RKO?

24 MS. FAUCHER: I object to the form of
25 the question.

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2 A. They first, the Budweiser people or their
3 lawyers, I think it is in correspondence, went to
4 Universal. Someone at Universal, unknown to all of us
5 at the moment, referred them to RKO, and then I guess
6 I must have discussed it with Joe DiMuro and he says
7 he believes it is Universal's right, and I am inclined
8 to think he is right, but I think there has been so
9 much delay that I think Budweiser may have abandoned
10 the campaign.

11 Q. Can you describe a bit more fully how
12 Budweiser wanted to use the still or the drawing of
13 the scene of King Kong on top of the Empire State
14 Building?

15 A. We have it in a document form. Did you
16 get the document, a reproduction of documents here?

17 Q. I believe we may have a document relating
18 to the Budweiser deal, but can you describe it now?

19 A. As I recall, all we got was a Xerox copy
20 of an outline, it looked like a cartoon of the Empire
21 State scene. I forget what the copy said.

22 This may never have been produced to you.
23 It may be in the folder on my table. You have never
24 seen it?

25 Q. I don't think we have.

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2 A. I will look for that.

3 Q. Is this a picture of King Kong that is to
4 be used or that Budweiser was proposing to use in
5 conjunction with an advertisement?

6 A. Yes, the Empire State scene, whether it
7 was to be a photographic reproduction or a cartoon, I
8 couldn't tell from the piece of paper they sent. It
9 was a Xerox.

10 Q. If Budweiser is proposing to use the
11 still itself, it is RKO's position that RKO alone has
12 the right to grant that right, is that correct?

13 A. No. We alone have the right to grant the
14 right to use the still, but I don't know if we can
15 grant the right to use the still in connection with
16 the advertisement. I don't know the answer to that.

17 Q. Is it possible that both RKO and
18 Universal would have to grant licenses in connection
19 with this use?

20 A. That would be my proposed solution in all
21 of these little disputes rather than waste the time
22 and effort.

23 Q. It is not resolved, I take it, as to
24 whether RKO would have the right to license the use of
25 a drawing of King Kong on top of the Empire State

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Building if in fact that is what Budweiser wanted to do in connection with its advertisement?

A. In my opinion, I don't think RKO would have the right under that decree.

Q. Has that been resolved between RKO and Universal?

A. The only time it has come up is possibly in connection with this Budweiser thing, and I don't know how that finally has been resolved. I think it just faded away. I will check for you.

Q. Are you familiar with an instance in which RKO licensed a company called Pop Tart to use a caricatured cartoon drawing of King Kong?

A. When would that have been?

Q. This has been marked as Exhibit 75 in the prior session of your deposition.

A. I don't think I ever ran into this one.

Q. Would you look at the attachment.

A. I have to check my records to see if I had anything to do with it.

Q. Does that attachment seem to be a license from RKO?

A. It does.

MS. FAUCHER: I object to the form of

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the question.

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Q. Is that Ruth Zitter's signature at the bottom of this document?

5

A. Yes, it is.

6

7

Q. You recognize it as Ruth Zitter's signature?

8

A. Yes, I do.

9

10

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Q. To your knowledge, has RKO ever granted a license to somebody of its interest in King Kong and advised that licensee that he may also have to get a license from somebody else for the proposed use?

13

14

A. I can't think of any unless there was a dual license, but I am not sure on that.

15

16

17

Q. But in fact such dual licensing is a solution that you would propose to resolve such areas as the Budweiser deal, is that correct?

18

A. Only with respect to stills.

19

20

21

Q. To your knowledge, has RKO ever been approached by a potential licensee who wanted a license to publish the King Kong story in a book?

22

23

24

25

A. I am not sure what you are talking about. As you know, there was a novelization of the King Kong story originally by a guy named Lovelace. Dunlap published it and reissued the book at the time of the

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2 A. No. As I read this letter, I was trying
3 to remember. Subject to being contradicted by
4 documents, the dispute probably arose from the all
5 rights assignment by Marion Cooper to RKO with respect
6 to the original King Kong in which he reserved
7 publication rights, and the dispute is whether scripts
8 for the picture as distinguished from novelization are
9 included in publication rights.

10 Q. Was that a dispute between Richard Cooper
11 and RKO?

12 A. I can't recall if there was any active
13 dispute or just our own interpretation. The word
14 should have been, perhaps, problem rather than
15 dispute. If it is important, I will do some checking.

16 Q. Let's look further in this paragraph.
17 There is a phrase at the end of the paragraph, "For
18 the above and other reasons, RKO has decided not to
19 undertake at this time any collateral exploitation of
20 the property or its components." Am I correct that
21 the property referred to there is the property of King
22 Kong?

23 A. Yes.

24 Q. And what is meant by the term "collateral
25 exploitation"?

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